

BOULT
CUMMINGS
CONNERS
& BERRY

REC'D TN
PLC REGULATORY AUTH.

LAW OFFICES
414 UNION STREET, SUITE 1600
POST OFFICE BOX 198062
NASHVILLE, TENNESSEE 37219

AUG 26 PM 4 35

Henry Walker
(615) 252-2363
Fax: (615) 252-6363
Email: hwalker@bccb.com

TELEPHONE (615) 244-2582
FACSIMILE (615) 252-2380
INTERNET WEB <http://www.bccb.com/>

August 26, 1999

EXECUTIVE SECRETARY

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Complaint of ISDN-Net Against BellSouth Telecommunications, Inc.
Docket No. 99-00630

Dear David:

Enclosed is a complaint against BellSouth Telecommunications, Inc. for filing an illegal promotional tariff, scheduled to become effective on September 1, 1999.

The tariff offers BellSouth telephone customers a \$30.00 rebate if they also purchase internet access service from BellSouth.net. This is clearly an illegal rebate in violation of state law.

By the time this complaint can be heard, however, ISDN-Net and other internet access providers will have suffered irreparable competitive harm.

Therefore, ISDN asks that the promotional tariff be suspended pending the outcome of this complaint.

Because of the emergency nature of this situation, ISDN-Net asks that you bring this matter to the attention of the Authority at the specially set conference on August 31, 1999.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC



Henry Walker

HW/nl

cc: Guy Hicks, attorney for BellSouth

FILE

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

8/26/99
4:35 pm
late

IN RE: COMPLAINT OF ISDN-NET, INC.)
AGAINST BELL SOUTH)
TELECOMMUNICATIONS, INC.)
FOR OFFERING AN ILLEGAL)
REBATE)

DOCKET NO. 99-00630

COMPLAINT

1. ISDN-Net, Inc. ("ISDN-Net") is a local provider of Internet services. For a flat, monthly rate of \$19.95, ISDN-Net offers customers the ability to access the Internet, typically through a local telephone call.

2. BellSouth Telecommunications, Inc. ("BellSouth") is a provider of local telephone service under the jurisdiction and supervision of the Tennessee Regulatory Authority ("TRA").

3. BellSouth offers residential telephone customers a variety of optional services such as call waiting, call forwarding, and "Caller-ID" (which allows the customers to learn the name and/or telephone number of the caller). Each of these optional offerings is a regulated, tariffed service. For a fixed monthly fee, BellSouth offers customers both local, residential telephone service and a combination of optional services, such as the ones described above. BellSouth calls this package of basic and optional services the "Complete Choice Plan".

4. BellSouth, either directly or through an affiliate, also offers Internet access service under the name "BellSouth.net". For a fixed monthly rate comparable to the rate charged by

FILE

ISDN-Net, BellSouth.net offers residential customers unlimited access to the Internet in direct competition with ISDN-Net.

5. Internet access services, such as the services offered by ISDN-Net and BellSouth.net, are not subject to regulation by the TRA.

6. On July 26, 1999, BellSouth notified the TRA that, from September 1, 1999 through October 31, 1999, BellSouth residential customers who order the "Complete Choice Plan" and who also order Internet access service from BellSouth.net will receive "two coupons redeemable for \$15 cash back each". In other words, each qualified customer will receive a \$30 rebate.

7. Tennessee law prohibits BellSouth from giving some customers preferential treatment over other similarly situated customers by means of a "special rate, rebate, drawback, or other device." T.C.A. 65-4-122(a). Tennessee law also prohibits BellSouth from making any "unjust or unreasonable classification" as the basis of rates for regulated services. T.C.A. § 65-5-204.

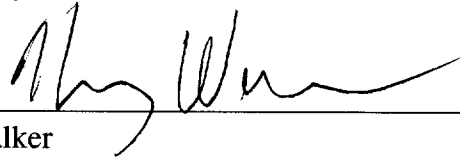
8. Under the terms of BellSouth's promotional offering, described in paragraph 6, BellSouth proposes to discriminate between those Complete Choice customers who also order service from BellSouth.net and other Complete Choice customers who do not order service from BellSouth.net. Both groups of customers will receive regulated, telephone services from BellSouth "under substantially like circumstances and conditions." Indeed, customers in both groups will receive identical regulated services at identical, regulated rates. But one group will receive a \$30 rebate. The other group will not.

9. BellSouth's promotional offering is an illegal rebate, in violation of T.C.A. §65-4-122. BellSouth cannot discriminate among customers of regulated telephone service based upon whether a customer also purchases unregulated, Internet access from BellSouth.net.

10. BellSouth's promotional offering also violates T.C.A. § 65-5-204(b) by imposing an "unreasonable classification" in the fixing of rates for regulated services. It is unreasonable to classify subscribers based upon whether the subscriber chooses to order Internet access services from BellSouth.net.

11. ISDN-Net asks that the TRA set this complaint matter for hearing as soon as practical, and following that hearing, order BellSouth to discontinue the promotional offering described in paragraph 6, and provide such other relief to ISDN-Net as the complainant may be entitled to receive and as the public interest may warrant.

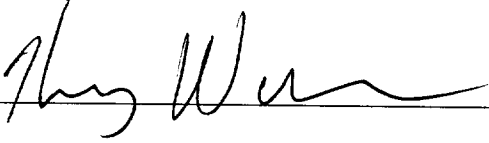
Respectfully submitted,



Henry Walker
BOULT, CUMMINGS, CONNERS & BERRY, PLC
414 Union Street, Suite 1600
P.O. Box 198062
Nashville, TN 37219
Attorneys for ISDN-Net

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been hand delivered to the office of Guy Hicks, BellSouth Telecommunications, 333 Commerce St., Suite 2101, Nashville, Tennessee 37201-3300 on this the 26 day of August, 1999.





BellSouth Telecommunications, Inc.
Room 22A1
333 Commerce Street
Nashville, Tennessee 37201-3300

Regulatory

July 26, 1999

RECEIVED

JUL 27 1999

TN REGULATORY AUTHORITY
TELECOMMUNICATIONS DIVISION

Ms. Darlene Standley
Regulatory Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Dear Ms. Standley:

From September 1, 1999 through October 31, 1999 Residence Customers who order a Complete Choice® Plan and one of the following will receive two coupons redeemable for \$15 cash back each:

BellSouth.net® Internet service
BellSouth® Wireless
BellSouth® Paging service

Please call me on 214-3815 if additional information is needed.

Yours truly,


Manager

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE: COMPLAINT OF ISDN-NET, INC.)
AGAINST BELL SOUTH TELECOMMUNI-)
CATIONS, INC. FOR OFFERING AN) DOCKET NO. _____
ILLEGAL REBATE)

MOTION FOR SUSPENSION

ISDN-Net, Inc. ("ISDN-Net") asks that the Tennessee Regulatory Authority suspend the promotional offering of BellSouth Telecommunications, Inc. ("BellSouth") described in the attached letter until the Authority has resolved the complaint, captioned above, filed against BellSouth by ISDN-Net.

In support of its request, ISDN-Net respectfully submits the following:

1. It is likely that ISDN-Net will prevail on the merits of its complaint. By that time, however, it will be too late to repair the damage done to ISDN-Net and to other Internet access providers by BellSouth's illegal actions.

2. As explained more fully in the complaint itself, BellSouth has proposed a sixty-day promotion, beginning September 1, 1999. During that period, residential customers who sign-up for BellSouth's "Complete Choice Plan," which is a package of local telephone services, will receive a \$30 cash rebate if they also purchase Internet access service from BellSouth.net.

This promotional offering is illegal for a number of reasons. The most obvious one is that BellSouth's proposal is an illegal rebate, in violation of T.C.A. § 65-4-122. That statute prohibits

BellSouth from discriminating among similarly situated customers by offering a rebate to some but not others.

Here, BellSouth discriminates among its regulated customers based upon whether the customers also purchases internet services from BellSouth.net. In language of Section 122(a), each BellSouth telephone customer is receiving "service for a like kind under substantially like circumstances and conditions." But BellSouth gives a \$30 rebate only to those customers who also purchase service from BellSouth.net. That is clearly illegal under Section 122(a).

Suppose, for example, that a BellSouth affiliate entered the real estate business and that BellSouth Telecommunications offered each telephone subscriber a \$1,000 rebate if the customer also bought a house through a BellSouth agent. Such a proposal would also be clearly illegal.

These regulatory principles are well established. They incorporate the common law duty of a utility to treat all similarly situated customers alike. *See, Dunlap Lumber Co. v. Nashville, Chattanooga, and St. Louis Railway*, 165 S.W. 224 (Tenn. 1913). BellSouth cannot discriminate among customers of regulated, utility services based upon whether the customer also purchases an unregulated service.

Nevertheless, by the time ISDN-Net prevails on its complaint, it may well be too late to undo the damage caused by BellSouth's illegal actions. ISDN-Net and other internet access providers may well lose customers to BellSouth.net. The only way to prevent that is to suspend BellSouth's promotional offering until this complaint can be resolved.

3. On the other hand, BellSouth loses nothing by a temporary suspension of the promotion. The promotion is not scheduled to become effective until September 1, 1999. Until then, BellSouth cannot legally offer or promise the rebate to anyone. Neither BellSouth nor any

BellSouth customer will suffer any harm by delaying this promotion pending the outcome of ISDN-Net's complaint.

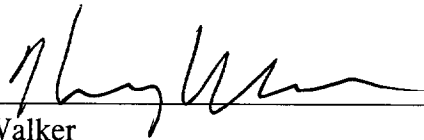
4. Aside from the interests of ISDN-Net, there are strong, public interest reasons for delaying this questionable promotion. BellSouth's proposal is not only discriminatory but also anticompetitive. In terms of antitrust law, BellSouth is trying to use its dominance in the local exchange telephone market to achieve dominance in the internet access market.

Although this agency has no statutory authority to enforce state or federal antitrust laws, the agency may consider such factors in determining whether the tariffs and practices of regulated carriers "protect the interests of consumers." T.C.A. § 65-4-123.

Whether or not the TRA ultimately agrees that BellSouth's promotion is illegal, there is surely sufficient cause for concern to suspend the implementation of the promotion until these questions can be resolved.

Such a delay does no harm to BellSouth but will protect ISDN-Net, other internet access providers, and Tennessee consumers from suffering irreparable damage caused by this discriminatory and anticompetitive filing.

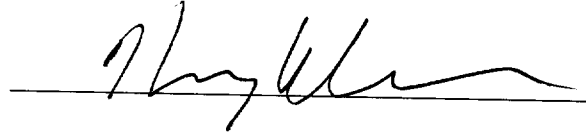
Respectfully submitted,



Henry Walker
BOULT, CUMMINGS, CONNERS & BERRY, PLC
414 Union Street, Suite 1600
P.O. Box 198062
Nashville, TN 37219
Attorneys for ICG TELECOM GROUP, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been hand-delivered to the office of Guy Hicks, BellSouth Telecommunications, 333 Commerce St., Suite 2101, Nashville, Tennessee 37201-3300 on this the 26th day of August, 1999.

A handwritten signature in black ink, appearing to read "Guy Hicks", is written over a horizontal line.